A

KESATUAN PEGAWAI-PEGAWAI BUMIPUTRA-COMMERCE BANK BHD (KEPAK BUMI-COMMERCE)

v.

B

ASSOCIATION OF BANK OFFICERS, PENINSULAR MALAYSIA & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
C HASHIM YUSOFF JCA
AZMEL MAAMOR JCA
[CIVIL APPEAL NOS: W-04-54-2004 & W-04-55-2004]
6 MARCH 2006

D ***LABOUR LAW:*** *Trade union - Registration - Decision of Director General of Trade Union to grant appellant's application for registration - Judicial review - Whether exercise of discretion by Director General fatally flawed - Whether registration of appellant would forward a purpose inconsistent with its object and rules - Trade Unions Act 1959, s. 12(2),*
E *(3)*

ADMINISTRATIVE LAW: *Exercise of administrative powers - Judicial review - Decision of Director General of Trade Union to grant appellant's application for registration - Whether exercise of discretion by*
F *Director General fatally flawed - Whether registration of appellant would forward a purpose inconsistent with its object and rules - Trade Unions Act 1959, s. 12(2), (3)*

The appellant was an in-house trade union representing all grades from 34 to 39 in Bank Bumiputra Malaysia Bhd, a bank which
G subsequently merged with Bank of Commerce Bhd to form Bank Bumiputra-Commerce Bhd ('BCB'). The present dispute arose out of an application by the appellant to seek registration by the Director General of Trade Unions ('DG') to represent the same category of workmen in BCB. The DG granted the application
H and the respondents, being dissatisfied, sought judicial review of the decision. The learned judge quashed the decision of the DG, resulting in the present appeal. The appellant argued that the learned judge had misdirected himself in concluding that the exercise of discretion by the DG was fatally flawed, whereas the
I respondents submitted that the registration of the appellant would forward a purpose inconsistent with its object and rules.

Held (dismissing the appeals):
Per Gopal Sri Ram JCA:

(1) Section 12(3) of the Trade Unions Act 1959 ('Act') mandates the DG to refuse registration if "... he is of the opinion that the trade union is likely to be used for unlawful purposes contrary to or inconsistent to its objectives and rules." In this instance, the registration of the appellant would indeed be in furtherance of a purpose inconsistent with its objects and rules, because it had made it clear in its application that it sought to represent persons who fell outside the scope of its authorised representation. That the DG did not take this matter into account was obvious based on the affidavit filed by him. Further, as correctly observed by the learned judge, the DG also failed to take into account the considerations set out in s. 12(2) of the Act. It is settled law that a public decision-maker who fails to take into account relevant considerations and makes a decision not in accordance with law is liable to have it quashed on an application for judicial review. Upon careful scrutiny, there was no appealable error disclosed in the judgment of the learned judge. (paras 5, 6, 7 & 8)

Bahasa Malaysia *translation of headnotes*

Perayu adalah sebuah kesatuan sekerja dalaman yang mewakili semua gred dari 34 hingga 39 di Bank Bumiputra Malaysia Bhd, sebuah bank yang kemudian disatukan dengan Bank of Commerce Bhd bagi menubuhkan Bank Bumiputra-Commerce Bhd ('BCB'). Pertikaian semasa berbangkit dari permohonan perayu untuk mendapatkan pendaftaran oleh Ketua Pengarah Kesatuan Sekerja ('DG') untuk mewakili pekerja-pekerja dalam kategori yang sama di BCB. DG telah membenarkan permohonan dan responden-responden, yang tidak berpuashati, memohon semakan kehakiman terhadap keputusan. Yang arif hakim memansuhkan keputusan DG, sekaligus mengakibatkan rayuan semasa. Perayu berhujah bahawa yang arif hakim telah tersalah arah akan dirinya apabila memutuskan pelaksanaan budi bicara oleh DG sebagai cacat secara yang memudaratkan, sementara responden-responden menyatakan bahawa pendaftaran perayu adalah bagi mencapai maksud yang bertentangan dengan objektif dan peraturannya.

A **Diputuskan (menolak rayuan)**
Oleh Gopal Sri Ram HMR:

(1) Seksyen 12(3) Akta Kesatuan Sekerja 1959 ('Akta') mewajibkan DG menolak pendaftaran jika "... beliau
B berpendapat bahawa kesatuan sekerja tersebut berkemungkinan akan digunakan untuk tujuan-tujuan yang salah yang tidak konsisten ataupun bertentangan dengan objektif dan peraturannya." Dalam kes ini, pendaftaran perayu sememangnya untuk mencapai tujuan yang tidak konsisten dengan objektif
C dan peraturannya, kerana dalam permohonannya ia menjelaskan bahawa ia memohon untuk mewakili orang-orang yang berada di luar skop perwakilannya yang dibenarkan. Bahawa DG tidak mengambilkira perkara ini jelas dari afidavit yang difailkan olehnya. Selain itu, seperti yang dengan betulnya dinyatakan
D oleh yang arif hakim, DG juga gagal mengambilkira pertimbangan-pertimbangan yang dihuraikan di dalam s. 12(2) Akta. Sudah menjadi undang-undang mantap bahawa seorang pembuat keputusan awam yang gagal mengambilkira pertimbangan-pertimbangan yang relevan dan membuat
E keputusan yang tidak selaras dengan undang-undang akan berdepan dengan keputusannya itu dimansuhkan atas satu permintaan semakan kehakiman. Setelah diteliti dengan cermat, tidak terdapat apa-apa kekhilafan yang boleh dirayui pada penghakiman yang arif hakim.

F **Case(s) referred to:**
Anisminic Ltd v. Foreign Compensation Commission & Anor [1969] 2 AC 304 ***(refd)***

Legislation referred to:
G Trade Unions Act 1959, s. 12(2), (3)

(Civil Appeal No: W-04-54-2004)
For the appellant - VK Raj; M/s P Kuppusamy & Co
For the respondent - LG Seah; M/s Lobo & Assoc

H *(Civil Appeal No: W-04-55-2004)*
For the appellant - VK Raj; M/s P Kuppusamy & Co
For the respondents - S Muhendaran (GS Kavitha with him); M/s Muhendaran Sri

[Appeal from High Court, Kuala Lumpur; Originating Motion No: R2-25-10-
I *2000]*

Reported by Suresh Nathan

JUDGMENT

(Oral)

Gopal Sri Ram JCA (delivering judgment):

[1] This the judgment of the court.

[2] The appellant in this case is an in-house trade union. When Bank Bumiputra Malaysia Berhad ("BBMB") was in existence the appellant represented all grades from 34 to 39 in that bank. These were persons employed in executive and managerial capacity. Later, as is common knowledge, BBMB merged with another bank, Bank of Commerce Berhad. The merged bank is now known as Bank Bumiputra Commerce Berhad ("BCB").

[3] The present dispute arises out of an application by the appellant to seek registration by the Director General of Trade Unions to represent the same category of workmen in BCB. The Director General granted the application. The respondents who are Association of Bank Officers, Peninsular Malaysia ("ABOM") and Kesatuan Kakitangan Eksekutif Bank of Commerce Semenanjung Malaysia ("BOCESU") objected to the registration. Dissatisfied with the decision of the Director General, they sought judicial review of his decision. The application was heard by Md. Raus bin Sharif J, a judge with much experience in matters relating to judicial review. In a carefully considered judgment, after discussing the main issues in this case, the learned judge quashed the decision of the learned Director General.

[4] Mr. Raj, of counsel for the appellant, has argued strenuously that the learned judge misdirected himself when he concluded that the exercise of the discretion by the Director General was fatally flawed. In order to appreciate his argument, it is necessary for us to hearken to the relevant statutory provision. It is s. 12 of the Trade Unions Act 1959 ("the Act") and this is what it says:

> **12. Registration**
>
> (1) The Director General may, upon receiving an application under section 10, and subject to this section, register the trade union in the prescribed manner.
>
> (2) The Director General may refuse to register a trade union in respect of a particular establishment, trade, occupation or industry if he is satisfied that there is in existence a trade

union representing the workmen in that particular establishment, trade, occupation or industry and it is not in the interest of the workmen concerned that there is be another trade union in respect thereof.

(3) The Director General shall refuse to register a trade union if:

(a) he is of the opinion that the trade union is likely to be used for unlawful purposes or for purposes contrary to or inconsistent with its objects and rules;

(b) any of the objects of the trade union is unlawful;

(c) he is not satisfied that the trade union has complied with this Act and of the regulations;

(d) he is satisfied that the objects, rules and constitution of the trade union conflict with any of the provisions of this Act or of any regulations; or

(e) the name under which the trade union is to be registered is:

(i) identical to that of any other existing trade union, or so nearly resembles the name of such other trade union as, in the opinion of the Director General, is likely to deceive the public or the members of either trade union; or

(ii) in the opinion of the Director General, undesirable,

unless the trade union alters its name to one acceptable to the Director General.

[5] Section 12(3) of the Act, as may be seen, mandates the Director General to refuse registration if to the words of the statute:

... he is of the opinion that the trade union is likely to be used for unlawful purposes or for purposes contrary to or in consistent to its objectives and rules.

[6] The question here is whether the registration of the appellant would forward a purpose inconsistent with its objects and rules. Ms L.G. Seah, the learned counsel for ABOM has argued that this is indeed the case. We are in agreement with her submission. In our judgment, the registration of the appellant would indeed be

in furtherance of a purpose inconsistent with its objects and rules because in its application it has made it clear that it seeks to represent persons who fall outside the scope of its authorised representation. That the Director General did not take this matter into account is obvious based on the affidavit filed by him.

[7] Further, as correctly observed by the learned judge, the Director General also failed to take into account the considerations set out in s. 12(2) of the Act. It is settled law that a public decision maker who fails to take into account relevant considerations and makes a decision not in accordance with law it is liable to be quashed on an application for judicial review: see *Anisminic Ltd v. Foreign Compensation Commission & Anor* [1969] 2 AC 304.

[8] Having very carefully scrutinised the judgment of the learned judge, we are satisfied that no appealable error is disclosed. There are two concluding remarks that we need to make. First, there are two appeals before us, one directed against ABOM and the other against BOCESU. Second, that this is a judgment of the court given in respect of both appeals.

[9] For the reasons already given, these appeals fail. We are unanimous in deciding that they be dismissed. The costs in respect of each appeal shall be paid by the appellant to each respondent. However, we direct the taxing registrar to allow only one item of getting up in Civil Appeal No. W-04-54-2004. The bill in respect of Civil Appeal No.W-04-55-2004 should be limited to profit costs and out of pocket expenses only. The reason for us making this order is because the respondent in Civil Appeal No.W-04-55-2004 merely rode on the coat-tails of ABOM's appeal.

[10] The deposit in each appeal shall go to each respondent to account of taxed costs. All other orders made in the High Court are affirmed.